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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,159

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Reinder Jaap Bril

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

TO, JENNIFER N

ART UNIT

PAPER NUMBER

2195

MAIL DATE

DELIVERY MODE

10/01/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,159	Applicant(s) BRIL ET AL.	
	Examiner JENNIFER N. TO	Art Unit 2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/12/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-24 are presented for examination.

Specification

2. The abstract of the disclosure is objected to because minor informality, i.e. the reference numbers such as method (60), real-time operating system (110, 170) etc. in the abstract should be removed. Correction is required. See MPEP § 608.01(b).
3. The disclosure is objected to because of the following informalities: missing section heading. In addition, the status incorporated by references application as discloses in page 4, line 18 of the specification need to be updates. Appropriate corrections are required.
4. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.

(f) BACKGROUND OF THE INVENTION.

- (1) Field of the Invention.
- (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(g) BRIEF SUMMARY OF THE INVENTION.

(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(i) DETAILED DESCRIPTION OF THE INVENTION.

(j) CLAIM OR CLAIMS (commencing on a separate sheet).

(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A

“Sequence Listing” is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required “Sequence Listing” is not submitted as an electronic document on compact disc).

Claim Objections

5. Claims 1-24 are objected to because of the following informalities: the references number as recited in the claims would created potential indefinite for the claims language. For example, claim 1, line 2 recited "assigning (61) a first task to be a More Important Task (114, 174)", as such according to the claim language there is exist only one task (a first task) being assigned to be More Important Task, but the number references (114, 174) indicated more than one task being assigned to be More Important Task. Appropriate correction is required (i.e. remove all the number reference in the claims).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

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F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 14 and 21-22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 17 and 19 of copending Application No. 10/599372. More specifically claims 14 and 21-22 of the instant application are anticipated by claims 17 and 19 of the copending application 10/599372 such that claims 17 and 19 contain all the limitations of claims 14 and 21-22 of the instant application. Claims 14 and 21-22 of the instant application therefore is not patently distinct from claims 17 and 19 of the copending application and as such is unpatentable for obvious-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 14-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 14 and 21 are rejected under 35 U.S.C. 101 because the claimed invention are directed to an apparatus claim, but appearing to be comprised of **software alone** without claiming associated computer hardware required for execution. For example, claims 14 and recited an apparatus comprising an allocation mechanism, a scheduler and a conditional budget monitor. According to the specification page 3, lines 5-25, and drawing figs, 2-3, 13 which define the functions that perform by the allocation mechanism, the scheduler, and the conditional budget monitor and not define the hardware structure performed these functions. According to MPEP 2111, examiner obliged to give the terms or phrases their broadest interpretation definition awarded by one of an ordinary skill in the art unless applicant has provided some indication of the definition of the claimed terms or phrases. Therefore, examiner interprets the allocation mechanism, the scheduler and the conditional budget monitor are any entity that capable of performing the functions as recited, which include software modules. In addition, the specification, page 24, lines 26-28, which suggests that these functions are a part of the job management program. Thus claims 14 and 21 are directed to a software system which is directed to non-statutory subject matter. See MPEP § 2106.01.

Claims 15-20 and 22-24 are rejected for failing to cure the deficiency from their respective parent claim by dependency.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 3-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The following terms lacks antecedent basis: the More Important Task – claim 21.

b. The claim language in the following claims is not clearly understood:

As per claim 3, lines 5-6, it is not clearly understood what is meant by “sending a message that either the additional budget margin is no longer required or that the additional budget margin is now required” (i.e. the first task sending the message or other entity sending the message, and “sending the message contains an indication that that either the additional budget margin is no longer required or that the additional budget margin is now required” or “sending the message in response that the additional budget margin is no longer required or that the additional budget margin is now required”.

As per claim 5, line 10, it is uncertain whether “a first possible occasion” is the same as “a first possible occasion” as recited in line 8 or a different “first

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possible occasion". For the purpose of examination examiner will interpret the limitation as a first possible occasion" is the same as "a first possible occasion" as recited in line 8.

As per claims 6-7, 12, 14-15, 19-20, they have the same deficiency as claim 5 above. Appropriate corrections are required.

As per claim 21, line 22, it is uncertain whether "a reservation command" is the same as "a reservation command" as recited in line 14 or a different "reservation command". For the purpose of examination examiner will interpret the limitation as "a reservation command" is the same as "a reservation command" as recited in line 14.

As per claim 22, it has the same deficiency as claim 21 above. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bril et al (hereafter Bril) (WO 02/37275).

10. Bril was cited in IDS filed 05/12/2006.

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11. As per claim 1, Bril teaches a method for controlling multiple tasks (abstract) comprising:

assigning a first task to be a More Important Task (page 6, lines 2-4; page 11, lines 5-8, assigning a task has a user focus to be a more important task);

assigning a second task to be a Less Important Task (page 6, lines 2-4; page 11, lines 5-8, assigning a task has no a user focus to be a less important task);

allocating a Guaranteed Budget Margin to the More Important Task along with a More Important Guaranteed Budget (page 3, lines 4-12; page 4, lines 30-32; page 7, lines 20-23; page 11, lines 11-12) and explicitly informing the More Important Task of this allocation (page 2, lines 11-12, 17, notifying the task of the allocation of resources);

allocating a Less Important Guaranteed Budget to the Less Important Task (page 11, lines 12-13) and explicitly informing the Less Important Task about this allocation (page 2, lines 11-12, 17, notifying the task of the allocation of resources);

sending a message that the More Important Task no longer requires the Guaranteed Budget Margin (page 4, lines 4-5; page 8, lines 4-5); and

allocating a Conditionally Guaranteed Budget Margin to the Less Important Task (page 5, lines 1-4, lines 28-30) and explicitly informing the Less Important Task of this allocation (page 2, lines 11-12, 17, notifying the task of the allocation of resources).

12. As per claim 2, Bril further teaches determining that the More Important Task no longer requires the Guaranteed Budget Margin (page 4, lines 4-5; page 8, lines 4-5).

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13. As per claim 3, Bril teaches a method for operating a first task, which first task has been assigned a higher level of priority than a second task (abstract; page 6, lines 2-4; page 11, lines 5-8) comprising:

determining whether the first task requires additional budget margin (page 4, lines 4-5); and

sending a message that either the additional budget margin is no longer required or that the additional budget margin is now required (page 4, lines 4-5; page 8, lines 4-5).

14. As per claim 4, Bril further teaches allocating a conditionally guaranteed budget margin automatically to the second task upon receiving the message that the first task no longer requires the additional budget margin (page 4, lines 21-25).

15. As per claim 5, Bril teaches a method for controlling two or more tasks of a multi-task process (abstract) comprising:

explicitly informing a first task that is a more important task about a More Important Guaranteed Budget and a Guaranteed Budget Margin (page 2, lines 11-12, 17; page 3, lines 4-12; page 4, lines 30-32; page 7, lines 20-23; page 11, lines 11-12, notifying a task about the resource reservation/allocation, wherein the task is a more important task, and the resource being allocated to the more important task including a More Important Guaranteed Budget and a Guaranteed Budget Margin);

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explicitly informing a second task that is a less important task about a Less Important Guaranteed Budget and a Conditionally Guaranteed Budget Margin (page 2, lines 11-12, 17; page 5, lines 1-4, lines 28-30; page 11, lines 12-13, notifying a task about the resource reservation/allocation, wherein the task is a less important task, and the resource being allocated to the less important task including a Less Important Guaranteed Budget and a Conditionally Guaranteed Budget Margin);

providing the More Important Guaranteed Budget plus the Guaranteed Budget Margin to the first task at a first possible occasion (page 3, lines 4-12; page 4, lines 30-32; page 7, lines 20-23; page 11, lines 11-12);

providing the Less Important Guaranteed Budget to the second task at a first possible occasion (page 11, lines 12-13);

upon the first task determining at some point during execution that the first task can do its job with the More Important Guaranteed Budget only (page 4, lines 4-5; page 8, lines 4-5), explicitly informing a scheduler that the first task does not require its Guaranteed Budget Margin (page 4, lines 4-5; page 8, lines 4-5, when the first task signaling/notifying its completion, i.e. the first task does not require its Guaranteed Budget Margin, the scheduler scheduling the other task based on the notice, thus, it is inherent that the first task explicitly informing a scheduler that the first task does not require its Guaranteed Budget Margin).

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16. As per claim 6, Bril further teaches stopping to provide the Guaranteed Budget Margin to the first task at a first possible occasion (page 3, lines 4-12; page 4, lines 30-32; page 7, lines 20-23; page 11, lines 11-12).

17. As per claim 7, Bril further teaches starting to provide the Conditionally Guaranteed Budget Margin to the second task at a first possible occasion (page 4, lines 21-25).

18. As per claim 8, Bril further teaches informing the second task of the providing the Conditionally Guaranteed Budget Margin (page 2, lines 11-12, 17).

19. As per claim 9, Bril further teaches determining by the first task at some point during execution that the first task requires the Guaranteed Budget Margin (page 3, lines 23; page 8, lines 4-14).

20. As per claim 10, Bril further teaches explicitly informing the scheduler that the first task does require its Guaranteed Budget Margin (page 2, lines 11-12, 17).

21. As per claim 11, Bril further teaches informing the second task that the Conditionally Guaranteed Budget Margin will be withdrawn (page 2, lines 11-12, 17; page 4, lines 7-14; page 7, lines 13-23).

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22. As per claim 12, Bril further teaches stopping to provide the Conditionally Guaranteed Budget Margin to the second task at a first possible occasion (page 8, lines 20-29; page 9, lines 11-16).

23. As per claim 13, Bril further teaches starting to provide the Guaranteed Budget Margin to the first task at a first possible occasion (page 9, lines 11-16).

24. As per claims 14-20, these are apparatus claims that performing the method claims 1-13. Therefore, they are rejected for the same reason as method claims 1-13 above. In addition, Bril teaches an allocation mechanism (see fig. 5, item 506), and a scheduler (page 3, lines 23; page 6, line 9).

Allowable Subject Matter

25. Claims 21-24 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, 35 U.S.C 101, and obvious type double patenting rejection, as well as minor claim objections set forth in this Office action.

26. The following is a statement of reasons for the indication of allowable subject matter:

The prior arts of recorded when taken individually or in combination do not expressly teach or render obvious the limitations recited in claim 21, **when taken in the**

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context of the claims as a whole, specific to a conditional budget monitor to monitor an availability of the Conditionally Guaranteed Budget Margin, said conditional budget monitor to receive a message that the More Important Task no longer requires the Guaranteed Budget Margin, to receive a message that the More Important Task now requires the Guaranteed Budget Margin, to receive budget allocations of the Guaranteed Budget Margin, the Conditionally Guaranteed Budget Margin, the More Important Guaranteed Budget and the Less Important Guaranteed Budget from the allocation mechanism, and to send out a reservation command regarding the budget allocations, said conditional budget monitor sending a reservation command to the scheduler including only the More Important Guaranteed Budget for the More Important Task and including the Conditionally Guaranteed Budget Margin along with the Less Important Guaranteed Budget for the Less Important Task.

At best the prior arts of record, specifically Bril et al (WO 02/37275) teaches an apparatus including a first task having a first priority level, a second task having a second priority level lower than the first priority level; an allocation mechanism to allocate budgets of resources, said first task being explicitly informed about a More Important Guaranteed Budget and a Guaranteed Budget Margin and said second task being explicitly informing about a Less Important Guaranteed Budget and a Conditionally Guaranteed Budget Margin, and scheduler providing the budgeted amounts to the first and second tasks based on the reservation command, said scheduler providing the More Important Guaranteed Budget plus the Guaranteed Budget Margin to the first task at a first possible occasion and providing the Less

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Important Guaranteed Budget to the second task at a first possible occasion, wherein upon the first task determining at some point during execution that the first task can execute properly with the More Important Guaranteed Budget only (see fig. 5; pages 2-5; page 6, lines 1-8; page 7, lines 16-23; page 8, lines 4-8, 32-34; page 9, lines 1-24; page 11, lines 3-25).

Thus, claim 21 is allowed over the prior arts of record.

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see PTO 892 for details).

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER N. TO whose telephone number is (571)272-7212. The examiner can normally be reached on M-T 6AM- 3:30 PM, F 6AM- 2:30 PM.

29. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

30. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jennifer To/
Patent Examiner, AU 2195